

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JESSICA R. MAVER, J.S.C.
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. Box 964
NEW BRUNSWICK, NEW JERSEY 08903-964

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APPROVAL OF THE COMMITTEE ON OPINIONS**

**Memorandum of Decision on Defendant's
Motion to Seal Documents & Nonparty Dr. Doe's Motion to Seal**

FILED
JUL 23 2010
JUDGE JESSICA R. MAVER

Derv v. Johnson & Johnson et al. [Docket No. L-5743-07-MT]
(In re: Ortho Evra® Birth Control Patch Litigation, Case No. 275)

For Defendant: Susan Sharko, Esq., Drinker Biddle & Reath, LLP
For Non-Party: Robert J. Lack, Esq., Friedman Kaplan Seiler & Adelman LLP
For Plaintiff: Kate Jaycox, Esq., Robins, Kaplan, Miller & Ciresi L.L.P.
Dated: July 23, 2010

For the reasons set forth in this memorandum, the motion filed on behalf of Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, L.L.C., and Ortho-McNeil Pharmaceutical, Inc., now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("Defendant" or "J&J"), to seal documents submitted in opposition to Defendant's motion for partial summary judgment is DENIED. Plaintiff, in opposing Defendant's Motion, argues the lack of good cause to seal these records and asserts, instead, that such documents be redacted to avoid disclosure of harmful information while preserving New Jersey's policy favoring of public access to court records. As Defendant's application is a pre-trial discovery motion, in accordance with Rule 1:6-2(d), the matter was not listed for oral argument.

Legal Analysis

Rule 1:38-1, establishing a presumption in favor of public access, provides that “[c]ourt records and administrative records . . . are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.” R. 1:38-1. A court may seal a record only upon a showing of “good cause.” R. 1:38-11; see also Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356, 375-76 (1995). Under the Rule, “good cause” may be satisfied where: “(1) [d]isclosure will likely cause a clearly defined and serious injury to any person or entity; and (2) [t]he person’s or entity’s interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.” R. 1:38-11(b). The recent clarification to the Rule notes:

[d]ocuments or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

[R. 1:38-11(d).]

In accordance with this court rule and applicable case law, “[t]he need for secrecy must be demonstrated with specificity as to *each document*.” Hammock, supra, 142 N.J. at 381-82; see also Pressler, Current N.J. Court Rules, comment 12 on R. 1:38-12. “The need for secrecy should extend no further than necessary to protect the confidentiality. Documents should be redacted when possible, editing out any privileged or confidential subject matter so that the protective order will have the least intrusive effect on the public’s right-of-access.” Hammock, supra, 142 N.J. at 382 (citing South Jersey Pub. Co., Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 488-89 (1991)) (internal citations omitted). The New Jersey state court system prefers redacting of documents as opposed to sealing of documents.

Defendant asserts that good cause exists to seal Exhibit 227¹ and Exhibit 355². Defendant explains that both documents contain internal employment details and private information regarding employees discussed in these letters. In support of the motion to seal these exhibits, Defendant also relies on the Certification of Anne Kuhn, the Vice President of Human Resources at J&J PRD. According to the sworn statement, it is the policy and practice of J&J PRD's to maintain the privacy of all personnel files. See Certification of Anne Kuhn, at ¶ 5. Defendant offers no separate argument in favor of its motion to seal Plaintiff's Opposition brief. Presumably, Plaintiff's Opposition brief discusses Exhibits 227 and 355 in some detail so as to potentially identify J&J personnel.³

At the court's request, Defendant provided a copy of Exhibit 227 and Exhibit 355 for the court's *in camera* review. Based on the court's review of these documents, the court does not find "good cause" exists to seal these documents. The New Jersey Court Rules provide a method for protecting litigants and interested parties in the form of redaction of "confidential personal identifiers." See Rule 1:38-7; see also Hammock, supra, 142 N.J. at 382. The rule requires redaction of personal identifiers appearing on a document submitted to the court. While the court is cognizant of the privacy concerns of J&J's current and former employees, the protection of those privacy concerns does not require the sealing of these documents. Redaction of personal identifiers will suffice to protect the confidentiality of the individuals while ensuring only a minimal intrusive effect on the public's right of access to court records. See Hammock, supra, 142 N.J. at 382.

¹ A letter from a former J&J employee to the Chairman of Research and Development at Johnson & Johnson Pharmaceutical Research and Development ("J&J PRD").

² A response letter written by the Vice President of Human Resources of J&J PRD.

³ In the reply letter brief, Defendant quotes an unpublished federal case, Garber v. Pharmacia Corp., 2009 WL 3424186 (D.N.J. Oct. 20, 2009), for the proposition that internal corporate documents should be filed under seal when the documents are not necessary to the court's decision on a motion. New Jersey state courts have not added a "relevancy" test when it comes to determining whether there is "good cause" to seal a record as defined under Rule 1:38.

Therefore, Exhibits 227 and 355, and Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, shall not be sealed by the court. However, the submitted documents must comply with the requirements of Rule 1:38-7. Counsel submitting these documents is required to confer with counsel for the other party and then redact all personal identifiers in accordance with Rule 1:38-7(e) before filing the documents with the Clerk of the Court.

Conclusion

Exhibits 227 and 355, and Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment need not be filed under seal. The party submitting these documents shall comply with the requirements of Rule 1:38-7(e).


JESSICA R. MAYER, J.S.C.